

REMARKS

The Examiner is thanked for withdrawing the finality of the rejection.

The double patenting rejection is acknowledged. A terminal disclaimer is being submitted with respect to each of the identified patents. Accordingly, the Examiner is requested to withdraw this rejection.

Claims 1-3, 5-25, 30, 34-44, 48-49 and 51 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Lewis, U.S. Publication No. 2003/0105641, in view of Hymel et al, WO 00/03328, and Melick et al, U.S. Publication No. 20070246538. With respect, this rejection is traversed.

A determination regarding alleged obviousness under 35 USC §103(a) requires an analysis of the “scope and content” of the cited art.

Scope and content

Lewis teaches a system whereby an end user navigates to a web site from his/her desktop computer (Figure 1) or mobile phone (Figure 7), purchases a ticket, and then receives the ticket, possibly in the form of a UPC-type code that can be scanned from at a reader device at a point of entry to the event associated with the ticket.

Hymel describes a system whereby a pager device can be used to receive and store UPC-type code that can represent a product coupon. That coupon can be scanned from the pager at the point-of-sale.

Melick describes a bar code reader that reads 1D and 2D bar code formats.

Differences between the claims and the cited art

With reference to claim 1, the Examiner is reminded that the claimed method refers explicitly to a “wireless transaction” that is only “partially complete” (at the “second time” after the “first transaction code” is optically scanned) and then, subsequently, “complete” (at the “third time distinct from the first time and the second time” after the “second transaction code is optically scanned). Diagrammatically, this process can be visualized as follows:

“at a first time”	→	“at a second time”	→	“at a third time”
(transaction begins)		“partially complete”		“complete”

In Lewis, the transaction is not “partially complete” and then later “complete” as “first” and “second” transaction codes are scanned from the device. Rather, the code is provided to the device and scanned, and then the transaction is over.

In Hymel, at most there are a series of sequential “transactions” (a coupon is displayed and then redeemed) but, importantly, each such transaction is completely independent of every other one. There is no transaction that can be said to be “partially complete” and then “complete” in the manner positively recited by claim 1.

In this regard, the Examiner is correct that “Lewis does not specifically teach in detail [“]at a third time distinct from the first time and the second time, optically scanning a second transaction code from the visual display of the wireless communication device to complete the wireless transaction.” See, Office action at page 7. The Examiner, however, then errs by concluding that Hymel meets this limitation by virtue of the “next coupon display and redeem [function].” *Id* As noted above, in Hymel each coupon display/redemption is an independent transaction; when one such “transaction” is performed, that transaction is over; it cannot be said to be “partially complete” and then later “complete.” With all due respect, Hymel teaches simple sequential transactions, as opposed to a method that involves steps or actions that “partially complete” a given transaction followed by steps or actions that later “complete” that same transaction. The “wireless transaction” in claim 1 is a single construct, not multiple sequential transactions that are each independent, as in Hymel.

Of course, one cannot show non-obviousness by attacking references individually where the rejection is based on a combination of the references; *In re Keller*, 642 F.2d 413, 416 (CCPA 1981). Applicants are not attacking the rejection on this basis. Rather, a test for obviousness is what the combined teachings of the references would have suggested to those of ordinary skill in the art, *Id.* at 426. Here, the “combined teachings” of Lewis, Hymel and Melick describe a system whereby an end user navigates to a web site, purchases a ticket, receives the ticket (that includes a UPC or 2D code) at his/her device or pager, and then presents the code to be scanned from a reader device at a point of entry to the event associated with the ticket. There is just one code, and one scan. Once this scan occurs and the individual enters the event, the individual

transaction is over. Hymel at best suggests that the process can be repeated again – but only with respect to a different transaction. Claim 1, in contrast, requires:

“at the second time, optically scanning the first transaction code from the visual display of the wireless communication device to permit the personal bodily entry into or through the physical structure to partially complete the wireless transaction; and

at a third time distinct from the first time and the second time, optically scanning a second transaction code from the visual display of the wireless communication device to complete the wireless transaction.”

“[E]very limitation positively recited in a claim must be given effect in order to determine what subject matter that claim defines.” *In re Wilder*, 429 F.2d 447, 450 (CCPA 1970); *See also In re Wilson*, 424 F. 2d 1382, 1385 (CCPA 1970) (“[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.”).

Rejections based on §103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Examiner may not “resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in its factual basis.” *In re Warner*, 379 F.2d 10100, 1017 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968).

Lewis teaches only a single code and a single scan; the described Lewis scan does not “partially complete” a transaction that is later “complete[d]” by a second scan.

Thus, independent claim 1 “as a whole” is not found in the combined teachings of the references.

Dependent claims 2-3, 5-12 and 14-29 are patentable for the reasons advanced with respect to independent claim 1.

Independent claim 30 likewise is distinct from the subject matter of Lewis, Hymel and Melick because it includes the subject matter directed to the transaction being “partially complete” at a first time (following the optical scanning of the first transaction code) and then the same transaction is “complete” at a second time distinct from the first time (following the optical scanning of the second transaction code). In addition, the claim is amended for purposes of clarity to recite that the “second time distinct from the first time” is also “while the wireless

transaction remains only partially complete.” This subject matter was implicit in the previous version of the claim. For the reasons set forth above with respect to claim 1, claim 30 is patentable over the combination of Lewis, Hymel and Melick.

Dependent claims 31-34, 36-37, 40-43 and 53 are patentable for the same reasons advanced with respect to independent claim 30.

Independent claim 47 likewise is patentable as it includes the “partially complete the wireless transaction” and “complete the wireless transaction” limitations that are not found in either Lewis or Hymel. To add further clarity, independent claim 47 has been amended to recite subject matter that was implicit in the prior wording, namely (new wording underscored):

“at a second time distinct from the first time, optically scanning the first transaction code from the visual display of the wireless communication device to permit personal bodily entry into the physical location or structure to partially complete the wireless transaction; and

at a third time distinct from the first time and the second time and while the wireless transaction remains only partially complete, optically scanning a second transaction code from the visual display of the wireless communication device to complete the wireless transaction, wherein personal bodily access into the physical location or structure is enabled only if both the first and second transaction codes are scanned at the respective second and third times.”

These amendments are provided for clarity and not based on the prior art, as the described combination fails to disclose or suggest the “partially complete the wireless transaction” and “complete the wireless transaction” subject matter originally pending.

Dependent claim 52 is patentable for the same reasons as advanced with respect to its parent claim.

Independent claim 48 likewise is patentable, for the reasons advanced above, as the Lewis, Hymel and Melick combination does not teach the “partially complete the wireless transaction” and “completing the wireless transaction” limitations, namely:

“if the authorization has been obtained, communicating an optically scannable transaction code from the transaction system to a wireless communication device, the optically scannable transaction code being a two dimensional (2D) image that encodes information in two dimensions

and that, at a first point in time, is capable of being scanned from the wireless communication device at the point of fulfillment to partially complete the wireless transaction; and

at a second point in time and while the wireless transaction remains only partially complete, completing the wireless transaction at the point of fulfillment by scanning a two dimensional (2D) image from the wireless communication device.”

Claim 48 has been amended for clarity to indicate that the “second point in time” is “while the wireless transaction remains only partially complete.” This subject matter was implicit in the prior version of the claim.

Dependent claims 49 and 51 are patentable for the reasons advanced with respect to claim 48.

In considering these arguments, the Examiner is once again requested to review the Declaration of Malik Mamdami, which is of record. While the Examiner states (Office action, at page 24) that he reviewed this Declaration, the Examiner has not provided any comments or statements regarding its substance. As a reminder, Mr. Mamdani’s Declaration was offered in part to address the question of whether 2D bar codes would be used to facilitate complex wireless transactions at the time of the present invention. Thus, this evidence goes to the question of whether one of ordinary skill in the art would combine Melick with Lewis and Hymel. The Declaration indicates that the answer to this question is no. In particular, Mr. Mamdami points out that, because of the inherent limitations of mobile devices, mobile device operating systems, and mobile web browser designs, at the time of this invention one of ordinary skill in the pertinent art would not have used 2D image codes for scanning from a wireless device, such as the Lewis PDA or the Hymel pager. Mamdani Declaration, at paragraph 8.

In addition, Mr. Malik’s Declaration also explains that the subject matter of amended claims 1, 30 and 47-48 (use of a 2D image code to facilitate a complex wireless transaction where a first scan “partially” completes the wireless transaction and the second scan then completes that transaction) has been commercially successful. As Mr. Mamdani explains, one such application is an airline boarding pass. In October 2007, the International Air Transport Association (IATA) announced a global standard for mobile bar codes to be used as airline boarding passes. In December 2007, the U.S. Transportation Administration (TSA) authorized a pilot program with Continental Airlines for mobile bar code check-in at Houston’s

Intercontinental Airport. In 2008, Continental, Delta, American, Northwest, and Alaska Airlines each introduced mobile bar code boarding passes at 11 major airports across the United States. Twenty percent (20%) of all airlines worldwide currently use mobile bar code boarding passes, a number that is expected to rise to 70%. A 2008 SITA survey found that thirty four percent (34%) of airline passengers prefer mobile boarding passes to use of paper. Earlier this year, the TSA announced that hand-held scanners will now be deployed in airports nationwide to facilitate these wireless transactions. As of the end of 2008, approximately one percent (1%) of all airline passengers worldwide use mobile boarding passes that include 2D image codes to facilitate a two-stage wireless transaction (a first scan of the device occurs at the security line and the second scan occurs at the departure gate). By the end of 2009, it is anticipated that 6% of all airline passengers worldwide will check in for their flights using this technique. Mamdani Declaration, at paragraphs 9-10.

Because any permissible combination of Lewis, Hymel and Melick does not disclose the subject matter as a whole of any of claims 1, 30 and 47-48, these claims are patentable. Further, there is now objective evidence in this record that the claimed subject matter is commercially successful. Such evidence is highly probative of non-obviousness.

The rejection of claims 26-29 and 31-33 under 35 U.S.C. § 103(a) as being unpatentable over Lewis, Hymel and Melick, as applied above, further in view of Ulvinen et al, U.S. Patent No. 6,393,305, is traversed, for the same reasons set forth above.

The Examiner is requested to reconsider the current rejections in view of the claim amendments.

For the reasons set forth above, a Notice of Allowance is respectfully requested.

Respectfully submitted,

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